IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

BHIM SEN & OTHERS VERSUS. STATE OF RAJASTHAN

S.B. Criminal Appeal No.545/2001 under Section 374 Cr.P.C. against the Judgment dated 30.7.2001 in Sessions Case No.58/99, passed by Sh. Murari Lal Sharma , RHJS, Additional Sessions Judge No.2, Hanumangarh..

DATE OF JUDGMENT : April 10 , 2007.

P R E S E N T

HON'BLE MR.JUSTICE CHATRA RAM JAT

Mr. Nag Raj Goswami, counsel for the appellants.
Mr.JPS Choudhary, Public .Prosecutor.

BY THE COURT:

1. This appeal is directed against the judgment and order dated 30.7.2001 passed by the Additional Sessions Judge No. 2 Hanumangarh, whereby he convicted and sentenced accused appellant Lichhiram under Section 332 & 333 IPC and Bhimsen & Amichand under Sections 332, 333 read with section 34 IPC, after trial in Sessions Case No.58/99 sentenced each of them to suffer imprisonment to undergo 3 years rigorous imprisonment along with fine of Rs.500/- and in default to further undergo five months

additional rigorous imprisonment and for offence under Section 332 IPC each of them sentenced for 1 years' rigorous imprisonment with fine of Rs200/-each and in default of payment of fine to undergo for 2 months additional imprisonment. All the sentences were ordered to run concurrently..

2. The prosecution story is woven like this:-

On 18.7.99 at 5.35 P.M. Chhitar Mal L.H.C. 227 vide Ravangi Rapt No.756 dated 18.7.99 started for execution of warrant and on return he lodged oral report that 4 P.M. he started from police station along with Om Prakash L.H.C., Rajpal and Raisingh F.C. In police dress in a private jeep with driver Rampratap & Ramdeva Ram to execute the warrant of arrest of Bhimsen s/o Imichand Gusai resident of Chak 3 H.D.P. was issued by the Additional Sessions Judge No2, Hanumangarh, dated 19.7.99 which was received through the Court of Judicial Magistrate Pilibanga under Section 224 IPC dated 19.7.99 when at 4.30 P.M. they reached Chak 3 H.D.P. where house of accused Bhimsen is situated,there in the house, Bhimsen himself, his father Imichand, brother Licchiramn were present there when it was informed by the police party that two arrest warrant against Bhimsen are with them which were issued by the ADJ Hanumangarh and J.M.Pilibanga dated 19.7.99 therefore, police party came there for service of the same. On saying this, all the accused become infuriated and said that no

police personnel came to their house till today, how they have dare to come. Thereafter they enter in their house and again came out with iron palta in hands of Lachhiram, Imichand with lathi, Bhimsen with Barchi and Santosh w/o Bhimsen was armed with Barchi, Banarsi Devi mother of Bhimsen came with spade in her hand, said that police personnel to leave the house otherwise they will breath after killing them today. After great efforts they did not under stand the situation and made circle around the police personnels. Lichhiram with the intention to kill, inflicted a blow of palta on his head, but to save the blow he raised left hand which struck with spade and his left hand was broken and he fell down. Bhimsen's wife inflicted blow on eye of Om Prakash, and father of Bhimsen inflicted blow on wrist of hand and said to Bhimsen for run away from house and they will see these police personnels. When Driver Ram Pratap, Ramdevaram and others told why you are beating to police party,then all of them returned to their house giving warning that today they have entered in their house and if again next time came then they kill them. All accused persons with common intention to kill them, inflicted blows on their person and obstructed in performing Government duty and help Bhimsen to ran away.

On the basis of oral report of Chitarmal, F.I.R.No.126 dated 18.7.99 P.S.Goluwala district Hanumangarh (Ex.P.10) was registered against Bhimsen, Lachhiram, Imichand, Banarsidevi w/o Imichand and Santosh w/o Bhimsen by caste Gusai resident of Chak

No.3 HD.P. for offences under Sections 332-353- 333-307-147-148-149,186 IPC and investigation was started. During investigation, recovery of weapons of offence were recovered and other usual memos were prepared and challan against accused appellants was filed under sections 307, 353,332, 333, 186, 147, 148 and 149 IPC before the Judicial Magistrate, Pilibanga, who committed this case to the Court of Sessions Judge, Hanumangarh, for trial as the case is exclusively triable by Sessions. Judge and Sessions Judge,Hanumangarh, transferred this case for trial to the Court of additional Sessions Judge No.2, Hanumangarh, After hearing on charge for offences under Section 147,148,353,332, 333 and 333/149 IPC and charges were read over and accused appellants pleaded not guilty and claimed for trial.

Prosecution has produced 11 witnesses and exhibited Ex.P1 to Ex.P.24 documents. Thereafter statement under Section 313 Cr.P.C. was recorded in which accused appellants stated that they have been falsely implicated due to enmity in a false case. No defence witness was produced in support of their case. After hearing the counsel for the parties, learned Additional Sessions Judge No.2 Hanumangarh, has convicted and sentenced,as mentioned hereinabove. Hence, this appeal.

3. Heard the learned counsel for the appellants and the learned

Public Prosecutor and perused the record of the case .

4. Learned counsel for the appellants contended that the prosecution evidence is not reliable for proving the incident and it throws serious doubt as injured Chittar Mal fell down after alleged injury and so he got fracture on his right arm and even the fracture has not been proved by Dr. Jaspal (P.W.10) who is not a Radiologist or specialist.

5. Learned counsel for the appellant further urged that prosecution is not able to prove the offence beyond reasonable doubt as it is possible that the injured Chittarmal sustained injury by falling on logwood. Out of 11 prosecution witnesses 8 witnesses are police personal and the independent witness driver Ram Pratap [PW 8] has been declared hostile and Deva Ram has not been produced so the prosecution witnesses cannot be relied on because of interested witnesses.Thus on consideration of prosecution witnesses offence under Section 333, I.P.C is not made out and, therefore, appeal deserves to be accepted and learned trial Court's conviction and sentence against accused appellants Bhim Sen and Amichand under Section 333/34 IPC and for Lachi Ram under Section 333 I.P.C, should be set aside and the appeal deserves to be accepted and allowed.

6. Admittedly, 8 prosecution witnesses are police personal

but out of eight witnesses PW 3 Om Prakash and P.W. 7 Chittarmal are injured witnesses and P.W. 9 Dr.Satpal Singh corroborated the fact of injury on their body and even the hostile witnesses P.W. 8 Ram Pratap corroborated the presence of four police personal i.e. P.W.2 Ram Singh, P.W. 3 Om Prakash, P.W. 6 Rajpal and P.W. 7 Chittarmal.

7. It is well settled law that when ocular evidence is cogent credible and trustworthy minor variations, if any, is not of any consequence. Eye witnesses account would require a careful independent assessment and evaluation in its credibility. The evidence must be tested for its inherent consistent and inherent probability of story.

8. On careful scrutiny of the prosecution evidence it is clear that injured Chittarmal [PW 7] got two injuries out of which injury No.1 is grievous as per his statement he felll down and the bone get fractured and medical officer P.W. 9 Dr. Satpal Singh accepted this suggestion in his cross examination that the injury No.1 of injured Chittarmal may be caused by falling on hard surface. Thus looking to this evidence there is possibility that fracture of injury No.1 of injured Chittarmal may be caused by fall and it was the bounden duty of the prosecution to prove this fact but on the basis of evidence produced it is doubtful that this

fracture may be caused by fall and thus the benefit of doubt goes in favour of accused appellant. Thus, the finding for the conviction under Section 333 IPC cannot be maintained and it should be set aside.

9. For the offence of Section 332 IPC it must be proved that offended victim was a public servant and hurt must have been caused to a public servant; and while such public servant was acting in the discharge of his duty as such, or in order to prevent or deter him from discharging his duty as public servant, or] in consequence of his having done or attempted to do anything in the lawful discharge of his duty as such a public servant.

10. Having carefully scanned the evidence of eye-witnesses – P.W.2,Ram Singh, P.W.3 Om Prakash, P.W.6 Rajpal, P.W.7Chittarmal and supported by Dr. Sayapal Sing P.W.9 having injuries on the body of injured persons Om Prakash P.W.3 and Chittarmal P.W.7 and corroborated by other two eye-witnesses, I find that prosecution has succeeded in making out convincing case for recording a finding of conviction against accused appellants Lachhit Ram, Bhim Sen and Amichand under Section 332 I.P.C. Thus appeal of the appellants should be partly allowed and conviction and sentence of appellant Lachhi Ram under Section 333 IPC and for appellants Bhim Sen and Amichand under Section 333/34 IPC should be set aside but the

conviction of all the three appellants under Section 332 IPC should be upheld. As regards to sentence, it is relevant that incident relates to 18.7.1999, there is approximately 8 years old. Appellant Amichand is 50 years old father whereas Bhimsen and Lachhi Ram are his sons. Accused appellants Lacchi Ram and Amichand remained in custody from 18.7.99 to 14.9.99 i.e. approximately for two months so looking to the time and relations etc , it is in the interest of justice to award the sentence the period already under gone.

11. For the above discussions, I disposed of the instant appeal in the following terms:-

(i) I partly allow the appeal of the appellants and acquit appellant Lachhiram under Section 333 IPC and appellants Bhimsen and Amichand under Section 333/34 IPC.

(ii) The conviction under Section 332 IPC against the accused appellant Lacchi Ram, Bhimsen and Amichand is maintained. But the sentence is modified to the extent of period already undergone. Accused appellant Bhimsen is in custody he shall be at liberty forthwith, if he is not required in any

other case. Bail bonds of appellant Lacchi Ram and Amichand are discharged and they need not to surrender.

(iii) The impugned judgment of learned trial Court stands modified as indicated above.

[CHATRA RAM JAT],J.

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